

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEDTRONIC, INC., MEDTRONIC
SOFAMOR DANEK, INC., MEDTRONIC
SOFAMOR DANEK USA, INC., AND
MEDICREA USA, CORP.,

Plaintiffs,

v.

JOSEPH F. WALLAND, JR.,

Defendant.

Civ. Action No:1:21-CV-02908
(ER)(OTW)

**ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION WITH
TEMPORARY RESTRAINING
ORDER PURSUANT TO FED. R. CIV.
P. 65**

Plaintiffs MEDTRONIC, INC., MEDTRONIC SOFAMOR DANEK, INC., MEDTRONIC SOFAMOR DANEK USA, INC., AND MEDICREA USA, CORP. (“Plaintiffs”) having moved by order to show cause for a temporary restraining order and preliminary injunction pursuant to Federal Rule of Civil Procedure Rule 65, for the reason that Defendant Joseph F. Walland, Jr. is violating his agreements with Plaintiffs and causing them irreparable harm, which agreements and any disputes relating thereto are expressly subject to mediation/arbitration, and the Court having reviewed the Complaint filed herein, the supporting Declaration of Dan Wolf dated April 7, 2021, the supporting Declaration of Grace Cargill dated April 8, 2021, the supporting Declaration of Nicholas Benson dated April 8, 2021, the Memorandum of Law, and the proposed Order to Show Cause; it is

ORDERED, that Defendant Joseph F. Walland, Jr. show cause on the 14th day of April, 2021, at 2:30 p. m. or as soon thereafter as counsel can be heard at the Daniel Patrick Moynihan United States Courthouse, Southern District of New York, 500 Pearl Street, New York, New York

10007, by teleconference at (877) 411-9748, access code: 3029857#, before Honorable Edgardo Ramos, United States District Judge, why the Court should not enter an order:

(a) pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, preliminarily enjoining Defendant Josef F. Walland, Jr. from the following activities until resolution of the parties' dispute has been reached via the dispute resolution procedures of Section X of Defendant's Employment Agreement with Plaintiff Medicea USA, Corp.:

1. being employed by Alphatec Spine, Inc., Alphatec Holdings, Inc., EOS Imaging, Inc., or any company affiliated with these entities (collectively, "Alphatec") in the position of Vice President of Sales Channel Development, any similar position, or any position with duties relating to sales or interaction with customers and potential customers;
2. performing any services (whether as an employee, consultant, independent contractor, advisor or otherwise) that are the same or similar to the services Defendant performed in his role as Medicea's CEO on behalf of Alphatec or any person or entity engaged (or about to be engaged) in the manufacture, marketing and/or sale of spinal implants anywhere in the United States in which Plaintiffs manufacture, market, and/or sell spinal implants;
3. performing any services (whether as an employee, consultant, independent contractor, advisor or otherwise), or participating in any manner (including as an investor), with Alphatec or any person or entity that is engaged (or is attempting to become engaged) in the then-existing business activities of the UNiD project, including, without limitation, the development, marketing, sales, and/or training of patient-specific implants used for spinal

surgeries, including patient-specific implants used in cervical, lumbar, thoracic, sacral or iliac spine procedures;

4. being involved in any company or business venture in which Defendant will be able or required to use, utilize or divulge any of Plaintiffs' trade secrets, competitive, proprietary, or confidential information;
5. actually or inevitably misappropriating, using, disclosing, distributing, or copying any or all trade secrets or confidential information of Plaintiffs, including all information, observations, and data concerning Medicea's business obtained by Defendant during the course of his performance of duties for Plaintiff Medicea USA, Corp.;
6. interfering with the advantageous business relationships between Plaintiff Medicea USA, Corp. and its employees and clients and prospective clients; and
7. defaming Plaintiff Medicea USA, Corp.'s good business reputation or any of Plaintiff Medicea USA, Corp.'s clients, services or products in any manner; and

(b) awarding Plaintiffs such other, further, and different relief as this Court may deem just and proper in the circumstances; and it is further

~~**ORDERED**, that pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, pending hearing and determination of this Order to Show Cause, the Defendant Joseph F. Walland, Jr. and his agents, attorneys, and all other persons in active concert or participation with him are temporarily enjoined and restrained:~~

1. ~~from being employed by Alphatec Spine, Inc., Alphatec Holdings, Inc., EOS Imaging, Inc., or any company affiliated with these entities (collectively, "Alphatec") in the position of Vice President of Sales Channel Development, any similar position, or any position with duties relating to sales or interaction with customers and potential customers;~~
2. ~~from performing any services (whether as an employee, consultant, independent contractor, advisor or otherwise) that are the same or similar to the services Defendant performed in his role as Medierca's CEO on behalf of Alphatec or any person or entity engaged (or about to be engaged) in the manufacture, marketing and/or sale of spinal implants anywhere in the United States in which Plaintiffs manufacture, market, and/or sell spinal implants;~~
3. ~~from performing any services (whether as an employee, consultant, independent contractor, advisor or otherwise), or participating in any manner (including as an investor), with Alphatec or any person or entity that is engaged (or is attempting to become engaged) in the then-existing business activities of the UNiD project, including, without limitation, the development, marketing, sales, and/or training of patient specific implants used for spinal surgeries, including patient specific implants used in cervical, lumbar, thoracic, sacral or iliac spine procedures;~~
4. ~~from being involved in any company or business venture in which Defendant will be able or required to use, utilize or divulge any of Plaintiffs' trade secrets, competitive, proprietary, or confidential information;~~

5. ~~from actually or inevitably misappropriating, using, disclosing, distributing, or copying any or all trade secrets or confidential information of Plaintiffs, including all information, observations, and data concerning Medierca's business obtained by Defendant during the course of his performance of duties for Plaintiff Medierca USA, Corp.;~~
6. ~~from interfering with the advantageous business relationships between Plaintiff Medierca USA, Corp. and its employees and clients and prospective clients; and~~
7. ~~from defaming Plaintiff Medierca USA, Corp.'s good business reputation or any of Plaintiff Medierca USA, Corp.'s clients, services or products in any manner.~~

~~**ORDERED**, that Plaintiffs shall post a corporate surety bond, cash or certified check or attorney's check in the amount of _____ (\$ _____) as security, determined adequate for the payment of such damages as any person may be entitled to recover as a result of a wrongful restraint hereunder; and it is further~~

ORDERED, that this Order is binding upon the parties to this action, their members, officers, agents, employees, or attorneys and all other persons or entities who receive actual notice of this Order by personal service, including by email, facsimile transmission, priority mail, or Federal Express, and it is further

ORDERED, that Plaintiffs must serve Defendant Walland, or his counsel with a copy of this Order by personal service, including by facsimile transmission or federal express, on or before the 9th day of April, 2021, such service will be deemed good and sufficient; and it is further

ORDERED that Defendant Walland must file any and all responsive papers to the Order to Show Cause no later than April 13, 2021 at 5:00 p.m.

Dated: New York, New York
April 9, 2021

A handwritten signature in blue ink, appearing to be "R. J. R.", is written above a horizontal line.

United States District Judge